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**MAHABUILDERS SDN BHD**

**v.**

**PENTADBIR TANAH JOHOR BAHRU & ANOR**

B

HIGH COURT MALAYA, JOHOR BAHRU
GUNALAN MUNIANDY JC
[ORIGINATING SUMMONS NO: 24M-359-11-2012]
3 JULY 2013

C ***LAND LAW:*** *Caveat - Private caveat - Application for extension of - Whether there was binding and enforceable contract to claim title to registered land - Whether plaintiff had requisite interest to be vested with right to enter private caveat - Whether court has power to extend caveat that has been cancelled or removed - Whether caveat had lapsed and no* D *longer had any effect or validity - National Land Code, s. 326(1), (1A), (2) & (3)*

***LAND LAW:*** *Caveat - Private caveat - Application for extension of - Court's power to extend caveat under National Land Code - Whether* E *limited to caveat that is in force - Whether Registrar of Titles had rightly acted within his powers in accordance with provisions of s. 326(1), (1A) & (3) National Land Code to remove caveat - Whether caveat had lapsed and no longer had any effect or validity*

The plaintiff filed an originating summons under s. 326(2) of the F National Land Code ('NLC') for an extension of the validity period of a private caveat that the plaintiff had entered on a piece of land owned by the second defendant ('the said land'). The background facts were that pursuant to negotiations entered into between the parties regarding the said land, the plaintiff had paid G a 10% deposit to the second defendant. However, a dispute arose between the parties as to the terms and conditions of the sale and purchase agreement ('S&P'). The second defendant, Hotel Rasa Sayang Sdn Bhd, eventually aborted the sale and returned the deposit to the plaintiff. Prior to the hearing of the instant H application, the Registrar of Titles ('the Registrar') had removed the said caveat. It was the second defendant's submission that there was no concluded agreement to sell the subject property as *consensus ad idem* had not been reached between the parties and on this ground, the plaintiff had no caveatable interest to enter the I caveat over the said land.

**Held (dismissing application):**

**(1)** There was no binding and enforceable contract for the plaintiff to lay any claim to the title to the registered land to confer on the plaintiff a caveatable interest. For all intents and purposes, the second defendant never executed any S&P with the plaintiff. As such, the plaintiff did not have the requisite interest to be vested with the right to enter the said private caveat. (paras 3 & 4)

**(2)** It is trite law that the court's power to extend a caveat under s. 326(2) of the NLC is limited to a caveat that is still in force or 'alive' and does not extend to a caveat that has already been cancelled or removed. The caveat in this case had lapsed upon the expiry of the notice for removal of the caveat (Form 19C) two months after it was served without any court order extending the validity of the caveat. It was thus incumbent upon the Registrar to cancel the caveat and remove it from the register as it was no longer in force. Hence, the Registrar had rightly acted within his powers in accordance with the provisions of s. 326(1),(1A) and (3) of the NLC to remove the caveat and cancel the entry from the register document of title as it no longer had any effect or validity. (paras 5, 6 & 8)

**Case(s) referred to:**

*Manian Kandasamy v. Pentadbir Tanah Daerah Raub & Anor [2011] 7 CLJ 583 CA* ***(refd)***

*Murugappa Chettiar Lakshamanan (Wasi Tunggal Harta Pesaka MRL Murugappa Chettiar, Simati) v. Lee Teck Mook [1995] 2 CLJ 545 CA* ***(refd)***

**Legislation referred to:**

National Land Code, ss. 326(1), (1A), (2), (3)

*For the plaintiff - L Parthiban (Shobana Mala Krishnan with him); M/s L Parthiban, Zulkiflee & Syed Sadik*

*For the 1st defendant - Anis Wahidah Mohamed; FC*

*For the 2nd defendant - Wong Kim Fatt (Wong Boon Chong with him); M/s Gulam & Wong*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Gunalan Muniandy JC:**

**[1]** This is an originating summons ('OS') filed on 30 November 2012 by the plaintiff under s. 326(2) of the National Land Code, 1965 ('NLC') for an extension of the validity period of a private caveat that the plaintiff had entered on a piece of land owned by the second defendant. Before this OS could be heard, the Registrar of Titles removed the caveat on 10 December 2012.

**[2]** The background to the entry of the caveat by the plaintiff is a negotiation between the plaintiff and the second defendant for the latter to sell its property to the former. According to the second defendant the sale was-subject to the execution of an agreement on terms and conditions to be agreed upon between the parties.

**[3]** Pursuant to the above negotiations, the plaintiff sent to the second defendant a cheque amounting to RM1,900,000 as 10% deposit for the proposed purchase which was accepted by the second defendant's solicitors. However, dispute arose between the parties as to the terms and conditions of the sale and purchase agreement ('S and P') to be executed. The draft S&P sent by the second defendant's solicitors to the plaintiff's solicitors was returned with substantial amendments. As a result, the parties could not reach consensus on the S and P. The second defendant eventually aborted the sale and its solicitors returned the cheque deposit of RM1,900,000 to the plaintiff's solicitors. Subsequent attempts by the latter to send the cheque deposit in the same sum to the former did not succeed. For all intents and purposes the second defendants never executed any S&P with the plaintiff: There was, therefore, no concluded agreement to sell the subject property as *consensus ad idem* had not been reached between the parties on the T&C. It was principally on this ground that the second defendant contended that the plaintiff had no caveatable interest to enter the caveat over the subject land. The second defendant relied on the Court of Appeal case of *Murugappa Chettiar Lakshamanan (Wasi Tunggal Harta Pesaka MRL Murugappa Chettiar, Simati) v. Lee Teck Mook* [1995] 2 CLJ 545 where it was held, *inter alia*:

> The principles formulated in the case of *Luggage Distributors (M) Sdn. Bhd. v. Tan Hor Teng & Anor* as applied to the present appeal require an investigation into the following matters. First, whether the respondent, on the material set out by him in his application

under s. 323(1) of the National Land Code 1965, has disclosed a caveatable interest. Secondly, if he has established a caveatable interest, whether the evidence he produced before the learned Judicial Commissioner in support of his claim to that caveatable interest discloses a serious question to be tried. Lastly, whether the balance of justice lies in favour of the caveat remaining on the Register pending the disposal of the suit.

It is clear that nowhere in the application, for the entry of the caveat, is there an assertion of a concluded contract for the sale and purchase of the land in question. In the absence of such an assertion it cannot be said that the respondent has a claim to the title to the land.

It is axiomatic that negotiations for a contract, however advanced, do not amount to a contract. Until and unless a purchaser has an enforceable contract for the sale of land, he can lay no claim to the title to registered land. *A fortiori*, he has no interest that is capable of protection by the entry of a caveat.

**[4]** Similarly, in the instant case, a binding and enforceable contract had not arisen yet for the plaintiff to lay any claim to the title to the registered land to confer on the plaintiff a caveatable interest. As such, the plaintiff did not have the requisite interest to be vested with the right to enter the said private caveat.

**[5]** Regardless of the issue of caveatable interest, the most significant fact in this case is that the caveat has been removed upon expiry of the notice for removal of the caveat (Form 19C, NLC). It is trite law that the court's power to extend a caveat under s. 326(2) of the NLC is limited to a caveat that is still in force or 'alive' and does not extend to a caveat that has already been cancelled or removed. In *Manian Kandasamy v. Pentadbir Tanah Daerah Raub & Anor* [2011] 7 CLJ 583, the Court of Appeal held:

The popular meaning attributed to the word "extend" in s. 326(2) of the Code is that it enlarges or gives further duration to any existing right rather than re-vests an expired right. We are in agreement with the judicial commissioner that the court's power to extend a caveat under s. 326(2) of the Code was only exercisable where a caveat is still "alive" and was no longer exercisable after a caveat had been cancelled.

A On the facts of this case the Land Administrator had clearly acted within the powers conferred upon him by s. 326(1B) of the Code in removing the appellant's 4th private caveat for failure to furnish a court order within the time specified. The judicial commissioner was right in ruling that once a private caveat has been removed, the Code does not give the court power to revive, renew/continue B a private caveat which has been cancelled. It is not within the inherent jurisdiction of the court to make orders which go beyond the limit of the powers expressly given to it by statute.

**[6]** The caveat in this case lapsed on 10 December 2012 upon C the expiry of this Form 19C notice two months after it was served without any court order extending the validity of the caveat. Service of the Form 19C notice was not in dispute. It was, thus, incumbent upon the Registrar to cancel the caveat and remove it from the register as it was no longer in force. D Any order of court extending its validity has to be obtained and served on the Registrar during its period of validity and not after it has lapsed. The OS had, accordingly, been rendered academic and redundant.

E **[7]** Section 326, NLC in so far as relevant to the present issue in dispute states:

**326 Removal of private caveats by Registrar.**

(1) Any person or body whose land or interest is bound by a F private caveat may at any time apply in Form 19H to the Registrar for its removal, and such application shall be accompanied by the prescribed fee.

...

G (1B) In the case in which a notice of intended removal in Form 19C has been served under sub-section (1A), the caveat shall lapse and be of no effect at the expiry of two months specified in the notice unless before the expiry of that period the Registrar shall have been served with an order of the Court extending the time provided in the said notice.

H

...

(3) The Registrar shall remove any caveat pursuant to this section by cancelling the entry thereof on the register document of title, and noting thereon the reason for the I cancellation and the date thereof.

## Conclusion

**[8]** The Registrar of Titles had rightly acted within his powers in accordance with the provisions of s. 326(1), (1A) and (3), NLC to remove the caveat and cancel the entry from the register document of title. Upon the lapse of the caveat after expiry of the notice of intended removal, it no longer had any effect or validity.

**[9]** For the foregoing reasons and in view of established principles, I held that this application was clearly unsustainable in law and on the facts. I, accordingly, dismissed it with costs of RM4,000.